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ployee's machine;[21] but where an assault was committed in spite or hate, or to carry out an independent purpose of the servant, the master was not liable.[22]

The result reached in the principal case seems to be in line with many of the North Carolina cases in which intentional torts are involved. But the court appears to be particularly harsh in denying the plaintiff recovery because the prosecution was instigated for a crime already committed against the master's property instead of for the purpose of recovering such property. This distinction made by the court seems more apparent than real. Although the immediate object of the manager's action might well have been to vindicate the law and punish the offender, yet it cannot be denied that such prosecutions do tend to discourage future criminal acts and thereby indirectly serve the master's interests. This deterrent effect appears especially pertinent here in view of the fact that the manager had been previously bothered by shoplifters. This would seem to be sufficient evidence of an intention to further the master's business and to protect his property so as to leave the question for the determination of the jury.

In conclusion it might be pointed out that the North Carolina courts have been more willing to submit to the jury cases involving negligent torts of the servant as distinguished from willful torts. Perhaps this action on their part has not been deliberate.[23] Theoretically, however, such a distinction has no basis and it is to be hoped that in the future, where doubt exists as to the purpose for which a servant acted, such doubt will be resolved by the jury whether his act be classified as negligent or intentional.

GEORGE J. RABIL.

Associations—Injunctive Relief Against Violation of Its Rules by Members

It appears well settled that the constitution, rules, regulations and by-laws[1] of a voluntary association constitute a contract between the

[21] Fleming v. Tarboro Knitting Mills, 161 N. C. 436, 27 S. E. 309 (1913).

[22] In Snow v. De Butts, 212 N. C. 120, 193 S. E. 224 (1937), where a manager assaulted the plaintiff who had opposed the defendant employer's petition to the Corporation Commission, the defendant was held not liable although the act was committed with an intent to benefit the master. A later case refused to let the jury consider the master's liability where an employee assaulted a person outside the master's premises as a result of an argument arising inside the store. Robinson v. Sears, Roebuck & Co., 216 N. C. 322, 4 S. E. 2d 889 (1939), 18 N. C. L. REV. 163 (1940).

[23] It seems that as a practical solution to the tendencies of juries to find the "deeper pocketed" employer liable, the courts, particularly in the field of agency law, have frequently exercised judicial restraints in an effort to mete out justice as they see it in the individual cases.

[1] So long as the issue is the enforceability of the constitution, rules, regulations, charter or by-laws, no distinction is necessary between them, and for purposes of this note they are used synonymously.

association and its individual members which the courts will enforce if the rules and regulations are not unreasonable, immoral, unlawful or contrary to public policy.[2]

This proposition was involved in a recent North Carolina case, the widely discussed "rump sales" case.[3] There, the Bright Belt Warehouse Association sought to enjoin several of its members from conducting auction sales of leaf tobacco in the defendants' warehouses without compliance with certain rules and regulations promulgated by the plaintiff's Board of Governors.[4] Upon the verified complaint a temporary restraining order and notice to show cause were issued. At the hearing the defendants' demurrer *ore tenus* was overruled and the restraining order continued as a temporary injunction until final hearing. In reversing this decision, the North Carolina Supreme Court held only that the regulation in question was invalid as beyond the Board's delegated powers.[5] The Court, however, recognized the previously mentioned rule

[2] North Dakota v. North Central Ass'n, 23 F. Supp. 694 (E. D. Ill. 1938); Walker v. Medical Soc'y, 247 Ala. 169, 22 So. 2d 715 (1945); Local Union No. 57 v. Boyd, 245 Ala. 227, 16 So. 2d 705 (1944); Levy v. Magnolia Lodge, 110 Cal. 297, 42 Pac. 887 (1895); Sult v. Gilbert, 148 Fla. 31, 3 So. 2d 729 (1941); South St. Joseph Live Stock Exchange v. St. Joseph Stock Yards Bank, 223 Mo. App. 623, 16 S. W. 2d 722 (1929); Height v. Democratic Women's Luncheon Club, 131 N. J. Eq. 450, 25 A. 2d 899 (1942); Robinson v. Dahm, 94 Misc. Rep. 729, 159 N. Y. Supp. 1053 (1916); Weighers, Warehousemen and Cereal Workers' Union 38-123 v. Green, 157 Ore. 394, 72 P. 2d 55 (1938); Manning v. San Antonio Club, 63 Tex. 166 (1885).

[3] Bright Belt Warehouse Ass'n v. Tobacco Planters Warehouse, Inc., 231 N. C. 142, 56 S. E. 2d 391 (1949).

[4] The Association at its annual meeting adopted a resolution authorizing its Board of Governors "to announce and publish such rules and regulations as may in the opinion of the Board best provide for the proper and orderly marketing and handling of tobacco on auction warehouse floors." Pursuant to this delegation of authority, the Board met and adopted the following resolution:

"1. That an essential element of a bona fide sale of tobacco at auction is that there shall be assigned to such sale an adequate set of buyers prepared to bid at competitive sale. The minimum requirement of an adequate set of buyers is the following:

"(a) Buyers for each of the three major domestic tobacco companies (Reynolds Tobacco Company, American Tobacco Company, and Liggett & Myers Tobacco Company), and

"(b) Buyers of at least three other recognized companies purchasing tobacco for export or for export and domestic consumption.

"2. No warehouse should offer tobacco for sale at auction unless and until an adequate set of buyers as defined above has been assigned to and secured for such sale."

Four sets of buyers were assigned to the Rocky Mount market by the three major domestic companies, permitting four simultaneous sales, but the defendants conducted an additional or fifth sale when the buyers present did not include representatives from each of the three major companies. The plaintiff sought to enjoin this practice as a violation of its rules and regulations.

[5] The Court found that the authority delegated to the Board of Governors to promulgate regulations as to marketing and handling tobacco was insufficient to give the Board power altogether to prohibit auction sales, otherwise fair and in accord with announced marketing regulations, because of the absence of buyers of either of three named manufacturers.

and added that rules and regulations may be enforced by injunction.[6] Considering the facts of the case, the only logical inference from this language is that injunction is a proper remedy on the part of the association to restrain its members from violation of the reasonable and lawful rules and regulations of the organization.

At first blush injunctive relief might seem routine if the charter and by-laws constitute an enforceable contract between the association and its members. Surprisingly enough, the diligent counsel in the suit were unable to uncover a square holding either way.[7] Thus, the statement of the Court seems to be without direct authority. The question then arises as to just how far the Court is likely to go in applying its language.

In attempting to answer this question, a brief consideration of the general nature of voluntary associations and of the attitude of the courts toward judicial interference in their internal affairs seems in order. The term "association" is one of vague meaning. It is used to indicate a body of individuals or entities which have joined together to promote some proper objective.[8] Generally, the word covers a multitude of organizations ranging from labor unions and trade associations to social clubs and fraternities.

Associations, as a rule, neither need nor want judicial enforcement of their rules and by-laws.[9] A national labor union would have little occasion to call on the courts to enjoin a local union from violating its rules since the national union has powerful means of its own, such as a cancellation of the local charter, to insure adherence. And a trade association would be hesitant to seek judicial aid, even if it were experiencing difficulty with recalcitrant members over price or production standards, for fear of government investigation or regulation. The value of autonomy to all voluntary associations, by their very nature, is great.[10]

[6] The plaintiff here is an incorporated association, but there is no real difference between unincorporated and incorporated associations insofar as the issue is the binding effect of the constitution, rules and by-laws. Most of the law relied on by the Court falls under the heading of "Associations" which deals largely with unincorporated associations. 7 C. J. S. Associations, §11.

[7] Nor has the note writer been able to discover a case in point. The nearest case seems to be Sea Gate Ass'n v. Sea Gate Tenants Ass'n, 6 N. Y. S. 2d 387 (1938). There the plaintiff association got an injunction to prevent the violation of one of its rules prohibiting picketing on the property of the members. It did not appear, however, that the defendants were members of the plaintiff organization.

[8] W. R. Roach & Co. v. Harding, 348 Ill. 454, 181 N. E. 331 (1932); People v. Brander, 244 Ill. 26, 91 N. E. 59 (1910); Venus Lodge v. Acme Benevolent Ass'n, 231 N. C. 522, 58 S. E. 2d 109 (1950).

[9] The United States Senate Committee Trade Association Survey indicates that trade association executives do not believe that they have available sanction with which agreements on price or production can be enforced. TNEC Monograph No. 18, *Investigation of Concentration of Economic Power* 51-53 (1941).

[10] It is to be noted here that the Board of Governors of the Bright Belt Warehouse Association apparently will not make an issue of any possible "rump" sales in 1950, despite the language of the Supreme Court in the principal case. The 1950 marketing regulations were adopted without major change from those which prevailed in 1949. Raleigh News and Observer, March 8, 1950, p. 1, col. 7.

Coupled with the reluctance of associations to resort to the courts, there is a parallel reluctance on the part of the courts to interfere in the internal affairs of these organizations.[11] A great many jurisdictions insist that a property right be abridged before there can be judicial interference.[12] Others hold that the proceedings of the association are subject to judicial review only where there is fraud, oppression or bad faith,[13] or the proceedings are violative of the laws of the land,[14] or are ultra vires[15] or otherwise illegal.[16] Even when willing to take jurisdiction, some courts require that the injured party must first have exhausted all administrative remedies within the association before seeking judicial relief.[17] Any analysis or discussion of these limitations is beyond the scope of this note.[18]

Clearly, an association is entitled to injunctive relief against its members to restrain them from violating their contracts with the parent body where there is specific statutory authority to that effect. The North Carolina Co-operative Marketing Act[19] is an example of this type statute. The very lifeblood of the co-operative depends on its ability to enforce members' agreements to sell only to the co-operatives. The statute acknowledges this need and the public interest involved.[20] There was also an element of public interest in the "rump sales" case, expressly recognized by the Supreme Court, and the Court seems to have been on sound ground in indicating that injunction would have been the proper remedy for this association, had the rules in question been within the powers delegated to the Board of Governors. Difficulties, however,

[11] *In re* Rosenbaum Grain Corp., 13 F. Supp. 601 (N. D. Ill. 1935); Local Union No. 57 v. Boyd, 245 Ala. 227, 16 So. 2d 705 (1944); Board of Trade v. Nelson, 162 Ill. 431, 44 N. E. 473 (1896).

[12] Elfer v. Marine Engineers Beneficial Ass'n No. 12, 179 La. 383, 154 So. 32 (1934); Crutcher v. Eastern Div. No. 321, 151 Mo. App. 622, 132 S. W. 307 (1910); Rogers v. Tangier Temple, 112 Neb. 166, 198 N. W. 873 (1924); Carey v. Int'l Brotherhood of Paper Hangers, 123 Misc. Rep. 680, 206 N. Y. Supp. 73 (1924); Kenneck v. Pennock, 305 Pa. 288, 157 Atl. 613 (1931); Fraser v. Buck, 234 S. W. 679 (Tex. Civ. App. 1934).

[13] Most Worshipful United Grand Lodge F. & A. M. v. Murphy, 139 Md. 225, 114 Atl. 876 (1921); Plemenic v. Prickett, 97 N. J. Eq. 340, 127 Atl. 342 (1925).

[14] Elfer v. Marine Engineers Beneficial Ass'n No. 12, 179 La. 383, 154 So. 32 (1934); Fraser v. Buck, 234 S. W. 679 (Tex. Civ. App. 1934).

[15] Williams v. District Executive Board, U. M. W. of A., 1 Pa. D. & C. 31 (1921).

[16] Allee v. James, 68 Misc. Rep. 141, 123 N. Y. Supp. 581 (1910).

[17] Harris v. Missouri P. R. R., 1 F. Supp. 946 (E. D. Ill. 1931); People *ex rel.* Michajlowski v. Tanaschuk, 317 Ill. App. 380, 45 N. E. 2d 984 (1942); Carson v. Gikas, 321 Mass. 468, 73 N. E. 2d 893 (1947); Hickey v. Baine, 195 Mass. 446, 81 N. E. 201 (1907); Robinson v. Dahm, 94 Misc. Rep. 729, 159 N. Y. Supp. 1053 (1916); Loeffler v. Modern Woodmen, 100 Wis. 79, 75 N. W. 1012 (1898).

[18] For discussions of adjudications of internal disputes see Notes, 7 CORNELL L. Q. 261 (1922), 24 MICH. L. REV. 82 (1925), 34 VA. L. REV. 352 (1948), 25 WASH. U. L. Q. 621 (1940), 58 YALE L. J. 999 (1949), 31 YALE L. J. 328 (1922), 30 YALE L. J. 202 (1920).

[19] N. C. GEN. STAT. §54-152(c) (1943).

[20] *See* Tobacco Growers Co-operative Ass'n v. Battle, 187 N. C. 260, 261, 121 S. E. 629, 630 (1924).

are in store if injunction is to be applied to breaches of by-laws of other associations, such as clubs and fraternal organizations.

It seems clear that the courts should have jurisdiction to interfere in the internal affairs of voluntary associations, and that such jurisdiction should include power to grant injunctive relief to an association to restrain the violation of rules and regulations by its members. But it seems equally clear that the courts should not feel compelled to exercise this jurisdiction unless the circumstances of the particular case warrant interference. The contract theory relied on by the Supreme Court should not rigidly require the equity court to become the final interpreter and enforcement agent of the laws and rules of all voluntary associations, clubs, and fraternal orders.

Other theories concerning judicial interference in the internal affairs of associations have been advanced. Professor Chafee, considering cases of wrongful expulsion, suggests that tort is the proper basis for relief, that the wrong consists in the destruction of the relation between the member and the association.[21] The argument seems valid with regard to expulsion cases, but it could hardly be contended that the member is committing such a tort when he violates a by-law. The "rump sales" in the principal case could scarcely be considered torts.

A recent federal case, expressly repudiating the "property right" limitation, holds that equity should protect "personal rights" in a political organization by injunction.[22] This case presents a definite forward step in the field of association law, but its reasoning is not applicable to the problem at hand. There is no "personal right" in the association which would be abridged by a member's failure to adhere to by-laws and regulations.

The heterogeneous character of the organizations falling under the label "Association" is the seat of much of the difficulty in attempting to work out any rule of law which can be consistently followed. Specific performance of contract by injunction seems the most logical theory on which to base a decision allowing an association injunctive relief for the enforcement of its rules and regulations. This would enable the courts to be free to act or to refuse to exercise jurisdiction in accordance with

[21] Chafee, *The Internal Affairs of Associations Not for Profit*, 43 HARV. L. REV. 993, 1007 (1930).

[22] Berrien v. Pollitzer, 165 F. 2d 21 (D. C. Cir. 1947). The suit involved a dispute within a non-profit corporation organized for the purpose of securing equality for women. Certain of the defendants, purporting to act as the National Council of the Party, adopted a resolution temporarily excluding from the Party headquarters all members of an "insurgent" group. One of the "insurgents," who had received no notice of the proposed resolution or of the meeting at which it was adopted, sued to enjoin this exclusion. The district court refused to assume jurisdiction on the ground that a court of equity can interfere only to protect "property rights." The court of appeals reversed, holding that "personal rights" of the plaintiff had been infringed, and that jurisdiction was warranted regardless of whether she had an interest in the assets of the association.

a discretion guided by certain criteria such as: (1) bad faith on the part of the member in violation of the rules; (2) disruptive friction which may be aroused within the organization by judicial interference; (3) the presence or absence of any interest of substance; (4) public interests and interests of third persons; (5) seriousness of the breach;[23] (6) probable effect of resort to the internal remedies of the association if such remedies might accomplish the desired result; (7) adequacy of other judicial remedies.

Whether or not the court will grant injunctive relief in the final analysis should depend on the particular circumstances of each case. The eventual answer must be one based upon practical considerations, a balance of the seriousness of violation and the need for relief against the disadvantages of intervening in the affairs of the particular association involved.

W. BRAXTON SCHELL.

Constitutional Law—Due Process—Admissibility of Confessions and Police Abuses

The Supreme Court of the United States, in an effort to protect the individual against certain police practices, is imposing on the state courts a new test for the admissibility of confessions. The test might be called the "pressure-abuses" test. It is prescribed for the states under the Due Process Clause of the Fourteenth Amendment and is designed to displace the old "testimonial trustworthiness" test. The latest application of the new test came in three cases decided last summer, *Watts v. Indiana*,[1] *Turner v. Pennsylvania*,[2] and *Harris v. South Carolina*.[3]

The old test, generally accepted over the country, was simply this: If a confession were the result of such pressure that there would be a fair chance that the accused would tell a lie, the confession was excluded. The courts talked of "voluntary" and "involuntary" confessions, of promises, threats, and physical abuses, but the underlying idea of nearly all the cases was that a confession would be excluded if it were given under such pressure that it would be untrustworthy.[4] The extent of police abuses—illegal detention, delay in arraignment, failure to ex-

[23] Dean Pound suggests that the chancellor might well ask these questions: Is the injury serious enough to warrant the extraordinary interposition of equity? Is it serious enough to warrant the expense and consumption of public time involved in a judicial proceeding? In cases involving fraternal orders, churches or secret societies, is it serious enough to balance the practical difficulty involved in the court's endeavor to learn, interpret and apply the laws and customs of the organization? Pound, *Equitable Relief Against Defamation and Injuries to Personality*, 29 HARV. L. REV. 640, 680 (1916).

[1] 338 U. S. 49 (1949). [2] 338 U. S. 62 (1949). [3] 338 U. S. 68 (1949).

[4] 3 WIGMORE, EVIDENCE §§822, 824 (3d ed. 1940). But Dean McCormick disagrees that the sole underlying basis for the confession rule is desire to protect against untrustworthiness. McCormick, *The Scope of Privilege in the Law of Evidence*, 16 TEXAS L. REV. 447, 451-457 (1938).